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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,170	04/09/2001	Keith R. Brown	11782-002001	7473

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EXAMINER

BORISSOV, IGOR N

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 10/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/828,170

Applicant(s)

BROWN, KEITH R.

Examiner

Igor Borissov

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2004.
2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-11 and 13-17 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-5,7-11 and 13-17 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Amendment received on 7/14/2004 is acknowledged and entered. Claims 6, 12 and 18 have been canceled. Claims 1, 7, 13 and 17 have been amended. Claims 1-5, 7-11 and 13-17 are currently pending in the application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-11 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crooks et al. (US 6,088,688).

Crooks et al. (Crooks) teach a computerized utility method and system for utility tracking, comprising:

As per claims 1, 7 and 13,

providing a host system capable of communicating with a client system over an Internet connection, the host system having an Internet-ready framework (column 2, lines 13-27; column 5, lines 50-56);

embedding the non-Internet enabled software application in the Internet-ready framework locally on the host system (column 2, lines 13-27);

permitting selective access to the host system by the client system to access and run the non-Internet enabled software application to display utility data (column 2, lines 13-27), wherein the utility data include a utility consumption time series (column 5, lines 17-18).

Crooks does not specifically teach that said software application is non-Internet enabled software.

However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The "providing" through "permitting" steps would be performed the same regardless of the type of said software application. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Furthermore, the specification does not provide any indication of the advantages of said feature over the prior art. Without said indication, *embedding Internet enabled software* or *non-Internet enabled software* would be obvious variation of *embedding software* method step.

Information as to *which includes a fine timescale utility consumption time series* is non-functional language and given no patentable weight. Non-functional descriptive material cannot render non-obvious an invention that would otherwise have been obvious. See: *In re Gulack* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) *In re Dembiczak* 175 F.3d 994, 1000, 50 USPQ2d 1614, 1618 (Fed. Cir. 1999). The specific example of non-functional descriptive material is provided in MPEP 2106, Section VI: (example 3) a process that differs from the prior art only with respect to non-functional descriptive material that cannot alter how the process steps are to be performed.

As per claims 2, 8 and 14, said method and system, wherein the utility data are acquired automatically from one or more remote terminal units (column 2, lines 13-27).

As per claims 3, 9 and 15, said method and system, wherein the utility data include power use data (column 2, lines 13-27).

As per claims 4, 10 and 16, said method and system, further comprising:
prompting a user of the client system to enter a password (column 4, line 66 – column 5, line 1);

permitting access to the host system only if the password entered by the user is identical to a predetermined password (column 4, line 66 – column 5, line 1).

As per claims 5, 11 and 17, said method and system, wherein permitting selective access to the host system includes permitting selected access to selected data stored on the host system (column 5, lines 2-24), and running said software application includes plotting the utility data in a graphical format (column 2, lines 27-29).

Response to Arguments

Applicant's arguments filed 7/14/2004 have been fully considered but they are not persuasive.

In response to applicant's argument that Crooks does not teach *displaying utility data which includes a fine timescale utility consumption time series measured every few minutes*, it is noted that Crooks, in fact, does teach displaying utility data, wherein the utility data include a utility consumption time series (Figs. 48-50 and 53; column 5, lines 17-18). Information as to *which includes a fine timescale utility consumption time series measured every few minutes* is non-functional language and given no patentable weight. Non-functional descriptive material cannot render non-obvious an invention that would otherwise have been obvious. See: *In re Gulack* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) *In re Dembiczak* 175 F.3d 994, 1000, 50 USPQ2d 1614, 1618 (Fed. Cir. 1999). The specific example of non-functional descriptive material is provided in MPEP 2106, Section VI: (example 3) a process that differs from the prior art only with respect to non-functional descriptive material that cannot alter how the process steps are to be performed.

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Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication should be directed to Igor Borissov at telephone number (703) 305-4649.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John Weiss, can be reached at (703) 308- 2702.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington D.C. 20231

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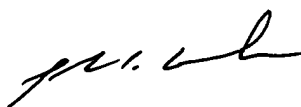
or faxed to:

(703) 872-9306 [Official communications; including After Final
communications labeled "Box AF"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal
Drive, Arlington, VA, 7th floor receptionist.

IB

10/20/2004



JOHN G. WEISS
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